



August 24, 2000

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government
Comptroller of Public Accounts
Post Office Box 13528
Austin, Texas 78711-3528

OR2000-3242

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138306.

The Comptroller of Public Accounts (the "comptroller") received a request for a list of the sales/use tax permit holders for the month of June 2000. You have provided the requestor with the list with the exception of the address and phone number of one permit holder. You claim that the address and phone number so far withheld is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 protects information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests. The first interest is an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976).¹

¹The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

The second individual privacy interest involves matters that are outside the zones of privacy but that nevertheless implicate an "individual's interest in non-disclosure or confidentiality." Open Records Decision No. 455 at 4 (1987) (*quoting Fadjo v. Coon*, 633 F.2d 1172, 1175 (5th Cir. 1981)). To determine whether a given situation triggers the constitutional right to privacy, this office applies a balancing test, weighing the individual's interest in privacy against the public right to know the information. *See* Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

Accordingly, under section 552.101 in conjunction with common law and constitutional privacy, information may be withheld from public disclosure in special circumstances. *See* Open Records Decision No. 169 (1977). We consider "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." Open Records Decision No. 169 at 6 (1977). Note that special circumstances does not include "a generalized and speculative fear of harassment or retribution." Open Records No. 169 at 6 (1977).

You explain that the information at issue pertains to a home-based business. The owner of this business and his co-habitant have a restraining order issued by a California court against the owner's ex-wife. You state that in the past, the ex-wife has stalked the business owner and his co-habitant and has threatened them with physical harm. Therefore, you explain, the owner of this business and his co-habitant fear that the public release of the address and phone number of the business will enable the owner's ex-wife to locate them. Based on these facts as represented to this office, we find that this situation qualifies as a special circumstance that triggers privacy protection of the submitted address and phone number. Therefore, the comptroller must withhold the submitted address and phone number under section 552.101.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

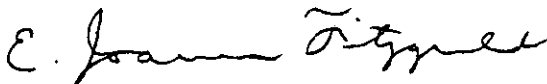
²Because section 552.101 is dispositive of this matter, we do not address your argument regarding section 552.108.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 138306

Encl: Submitted documents

cc: Mr. Bruce McCarty
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(w/o enclosures)